

# Nadler Examines Implications of Supreme Court's Decision in Citizens United, Considers Legislative Responses

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WASHINGTON, D.C. – Today, Congressman Jerrold Nadler (D-NY), Chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, chaired a hearing on “the First Amendment and Campaign Finance Reform After Citizens United.” The hearing examined the implications of the Court’s January 21st decision in Citizens United v. Federal Elections Commission, and looked into possible legislative responses.

“The Supreme Court’s decision in Citizens United was an astounding example of judicial activism,” said Nadler. “The justices answered a question they were not asked in order to overturn a century of precedent which the Court had reaffirmed only recently. So now that corporations – including those controlled by foreign interests – have the same rights as any voter, what is in store for our democracy? Perhaps, one day, we will have Exxon as a colleague here in Congress.”

The Supreme Court’s recent 5-4 decision in Citizens United struck down a century of law prohibiting independent expenditures by corporations and unions using their general funds in favoring or opposing particular candidates. With the Citizens United decision, corporations and unions can now draw on general treasury funds to finance candidate advertising at any time during an election period. Responses to the decision were swift and angry from many quarters. President Obama has publicly directed his administration to immediately work with bipartisan Congressional leaders to “develop a forceful response to this decision.”

Today’s expert witnesses were: Laurence Tribe, Professor of Constitutional Law, Harvard Law School; Monica Youn, Brennan Center for Justice at NYU School of Law; Sean Parnell, Center for Competitive Politics; and, Donald Simon, General Counsel, Democracy 21.

The following is Nadler’s prepared opening statement:

“Today’s hearing examines the Supreme Court’s recent decision in the case of Citizens United v. FEC. It is a case which poses a grave threat to the integrity of our democratic system.

“The Subcommittee will examine the Court’s reasoning, the scope of the decision, its likely impact, and what options Congress may have at its disposal, remaining, to deal with the problems we are likely to encounter now that the Court has declared open season on democracy.

“One of the things that strikes me, and I’m sure that my colleagues on the other side of the aisle who are constantly assailing judicial activism will agree, is the extent to which an extraordinarily activist Court reached out to issue this decision.

“The justices answered a question they weren’t asked in order to overturn a century of precedent which it had reaffirmed only recently. The only real change has been one of Court membership. The Court sought to decide the case on the broadest constitutional grounds, when it could easily have resolved the question on much narrower grounds.

“Finally, the Court substituted its judgment of what constitutes corruption in politics for that of the democratically elected representatives in the Congress, and in most of the state legislatures, who have actually participated in the process, and who understand first hand the corrosive effect of money in politics. The absence of Justice

O'Connor, the only former legislator on the Court, may have made a real difference in this case.

Chief Justice Roberts' concurrence, in particular, was a virtual manifesto for the judicial activist looking for an excuse, to overturn longstanding precedent even when those precedents aren't properly before the court. It can be considered a warning shot, and it bodes ill for the future, and certainly ill for stare decisis in the future. His opinion hardly reads like the words of an umpire who is simply following precedent and deciding cases as narrowly as possible. It certainly doesn't sound like the man who presented himself to the Senate at his confirmation hearings. In fact, it certainly raises questions as to the truthfulness of his testimony at the confirmation hearings.

Justice Stevens stated the basic issue clearly in his dissent:

The conceit that corporations must be treated identically to natural persons in the political sphere is not only inaccurate but also inadequate to justify the Court's disposition of this case. In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interest of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

Former Justice O'Connor discussed the threat to the integrity of the judiciary in a recent speech at Georgetown University Law Center. She said "this rise in judicial campaigning makes last week's opinion in Citizens United a problem for an independent judiciary. No state can possibly benefit from having that much money injected into a political campaign." And she was of course referring specifically to a judicial political campaign.

So now that corporations — including those controlled by foreign interests — have the same rights as any voter, what is in store for our democracy? What other rights will the Court confer on corporations? Perhaps, one day, we will have Exxon as a colleague here in Congress. Many would say we already do. And what can Congress, within the bounds set by the court, still do to control the influence of the moneyed aristocracy in our political process?

I look forward to the testimony of our witnesses on this very important issue, and I yield back the balance of my time.